

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
 (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference RL.P52689WO	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/EP 03/50172	International filing date (<i>day/month/year</i>) 16.05.2003	Priority date (<i>day/month/year</i>) 16.05.2003	
International Patent Classification (IPC) or national classification and IPC H04L29/06			
Applicant TELEFONAKTIEBOLAGET LM ERICSSON et al			

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
 2. This REPORT consists of a total of 11 sheets, including this cover sheet.
 3. This report is also accompanied by ANNEXES, comprising:
 - a. *(sent to the applicant and to the International Bureau)* a total of sheets, as follows:
 - sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - b. *(sent to the International Bureau only)* a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items:
- Box No. I Basis of the opinion
 - Box No. II Priority
 - Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - Box No. IV Lack of unity of invention
 - Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - Box No. VI Certain documents cited
 - Box No. VII Certain defects in the international application
 - Box No. VIII Certain observations on the international application

Date of submission of the demand 17.12.2004	Date of completion of this report 06.05.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer García Bolos, R Telephone No. +49 89 2399-7110



INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

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Box No. I Basis of the report

- With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - international search (under Rules 12.3 and 23.1(b))
 - publication of the international application (under Rule 12.4)
 - international preliminary examination (under Rules 55.2 and/or 55.3)
 - With regard to the **elements*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

Description, Pages

1-11 as originally filed

Claims, Numbers

1-12 as originally filed

Drawings, Sheets

1/3-3/3 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. The amendments have resulted in the cancellation of:
 the description, pages
 the claims, Nos.
 the drawings, sheets/figs
 the sequence listing (*specify*):
 any table(s) related to sequence listing (*specify*):

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 the description, pages
 the claims, Nos.
 the drawings, sheets/figs
 the sequence listing (*specify*):
 any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	3,5-8
	No:	Claims	1,9,10,11,12
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-12
Industrial applicability (IA)	Yes:	Claims	1-12
	No:	Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

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(SEPARATE SHEET)**

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Section I. Basis of the opinion

The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

- D1: US-B1-6 542 499 (MURPHY JAMES ET AL) 1 April 2003 (2003-04-01)
- D2: US 2003/053463 A1 (NYLANDER TOMAS ET AL) 20 March 2003 (2003-03-20)
- D3: SZABÓ I: "Performance Evaluation of a New End-to-end Measurement Based Call Admission Control Scheme for Supporting IP Telephony" PROCEEDINGS OF THE 2001 INTERNATIONAL SYMPOSIUM ON PERFORMANCE EVALUATION OF COMPUTER AND TELECOMMUNICATION SYSTEMS, 15 July 2001 (2001-07-15), - 19 July 2001 (2001-07-19) pages 498-505, XP009020891 Florida ISBN: 1-56555-240-7
- D4: WO 00/72624 A (NOKIA NETWORKS OY ;KOISTINEN TOMMI (FI)) 30 November 2000 (2000-11-30)

**Section V. Reasoned statement under Rule 43bis.1(a)(i)
with regard to novelty, inventive step or industrial applicability**

1. Article 33 PCT

1.1 Independent claims 1 and 9 to 12

The subject-matter of independent claims 1, 9, 10, 11 and 12 is not novel or does not involve an inventive step, Articles 33.2 and 33.3 PCT.

The subject-matter of claims 1, 9, 10, 11 and 12 is industrially applicable according to Article 33.4 PCT.

1.1.1 Claim 1 in the light of Article 33.2 PCT

The subject-matter of claim 1 is not new over the disclosure of document D1, because D1 discloses (see column 2, line 60 to column 5, line 22; column 7, line 17 to 56; figures 1, 2 and 3; and see also the embodiment disclosed in column 7, line 57 to column 9, line 17; figures 10 and 11) according to all the features of claim 1 (applying the terminology of present claim 1 and the references of D1):

A method of controlling call admission within a system comprising a plurality of media gateways interconnected by a packet switched backbone, the method comprising the steps of:

- A. At least one media gateway (Gateways 12 and 22, figure 1), monitoring the level of congestion suffered by incoming packets to that gateway from other media gateways or groups of media gateways over said backbone (Quality of service monitor 29, figures 2 and 3; column 3, lines 20 to 24; column 7, lines 31 to 56).
- B. Following receipt of a request for said at least one media gateway to terminate a bearer extending over said backbone from a "peer" media gateway, making a decision on the admissibility of that request based upon the previously monitored level of congestion suffered by incoming packets from that peer media gateway or a group of media gateways containing the peer gateway (column 7, lines 17 to 30).

Moreover, claim 1 is not novel over D2 (paragraphs 138 to 150; figures 12, 13, 15 and 16; paragraphs 164 to 166, figure 18; paragraphs 178 to 180 and 190 to 191; figures 23, 24 and 25).

1.1.2 Claim 9 in the light of Article 33.2 PCT

The features of claim 9 correspond to the features of claim 1 because the features of claim 9 are means for performing the steps of the method of claim 1. Therefore, the considerations in paragraph 1.1.1 are also valid for claim 9. The subject-matter of

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claim 9 is thus not new, Article 33.2 PCT.

1.1.3 Claim 10 in the light of Article 33.2 PCT

The subject-matter of claim 10 is not novel over the disclosure of document D2, because D2 discloses (see in particular paragraphs 20 to 22, 98 and 137 to 191; figures 11 to 16; paragraphs 163 to 166; 177 to 181 and 184 to 191; figures 18, 20A, 23, 24 and 25) according to all the features of claim 10 (applying the terminology of present claim 10 and the references of D2):

A media gateway controller (MGC 1110 in figure 23; paragraphs 164 and 165) arranged to control call admission within a system comprising a plurality of media gateways (MG 625 in figure 23; paragraphs 164 and 165) interconnected by a packet switched backbone (Broadband Network 1125 . in Figure 23; paragraphs 98 and 138), the media gateway controller comprising:

- A. An interface towards at least one media gateway (figure 23; paragraphs 164 and 165).
- B. Means for receiving monitored congestion levels (paragraph 184; figure 23) from the or each media gateway to which it has an interface, the monitored congestion levels being indicative of the congestion suffered by incoming packets to the or respective gateways from other media gateways or groups of media gateways over said backbone (paragraphs 179, 180 and figure 23).
- C. Means for receiving a call request requiring that a media gateway terminates a bearer extending over said backbone from a "peer" media gateway (paragraphs 188 and 190).
- D. Means coupled to both the receiving means making a decision on the admissibility of that request based upon the congestion level suffered by incoming packets from that peer media gateway or a group of media gateways containing the peer gateway (paragraphs 187 and 188, figures 23 and 24).

Moreover, claim 10 is not novel over D1 (DDR controller, column 7, line 57 to column 9, line 18; figures 10 and 11).

1.1.4 Claims 1, 9 and 10 in the light of Article 33.3 PCT

It is furthermore noted that even if the Applicant would interpret the disclosure of documents D1 or D2 in a slightly different manner than the examiner has done in the above analysis (see paragraphs 1.1.1, 1.1.2 and 1.1.3), and based on his interpretations would come to the conclusion that there are differences between the subject-matter of present claim 1, 9 or 10 and D1 or D2 which would then establish novelty, then these differences, even if they could be acknowledged as such, would only be of so minor nature that they could not be the basis for establishing the presence of any inventive step, Article 33.3 PCT, as D1 and D2 disclose the same object and the same type of solution as the present application.

1.1.5 Claims 11 and 12 in the light of Article 33.3 PCT

The features of claims 11 and 12 correspond to the features of claim 1 in terms of computer program storage mediums.

The application of a computer program storage medium, having stored thereon a computer program for causing an apparatus to operate in accordance with the method of any one of Claims 1 to 8, is lying in the normal design competence of a skilled person.

Therefore, the considerations in paragraph 1.1.4 are also valid for the features of claims 11 and 12. These reasons render the subject-matter of claims 11 and 12 not inventive, Article 33.3 PCT.

1.1.6 The applicant answered to the written opinion. The applicant failed to provide convincing arguments because the features to which the applicant refers in his argumentation cannot be found in the independent claims.

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1.2 Dependent claims 2 to 8

1.2.1 The subject-matter of claims 3 and 5 to 8 is not novel and the subject-matter of claims 2 and 4 lacks an inventive step, Articles 33.2, 33.3 PCT.

In particular, according to features of claims 2 and 4, document D4 discloses (see page 8, line 1 to 15) the congestion notification feature.

As to claims 3 and 4, D1 (see column 7, lines 53 to 56) and D2 (see e.g. paragraphs 180 and 181) disclose the way of monitoring congestion level.

Documents D1 (see column 7, lines 26 to 30 and column 8, lines 31 to 33) and D2 (see paragraphs 166 and 180) discloses the association between incoming packets and addresses according to the features of claim 5.

Documents D1 (see VoIP network 20, Figure 1; column 2, line 63 to column 3, line 8) and D2 (see paragraph 98 and figure 18) also disclose the IP backbone according to the features of claim 6.

Moreover, D1 discloses the step of making the decision at the media gateway according to the features of claim 7 in the already-cited passages.

Documents D1 and D2 disclose the decision step according to the features of claim 8 in the already-cited passages.

1.2.2 The subject-matter of claims 2 to 8 is industrially applicable according to Article 33.4 PCT.

**Section VII. Certain defects
in the international application (form or content)**

1. Furthermore, if the Applicant intends to elect the EPO for the regional phase, it should be taken into account that according to the current practice in the EPO (T1173/97, OJ10/99, 609), the wordings of claims relating to computer readable storage mediums (claims 11 and 12) should read:

A computer program comprising computer program code means adapted to perform the steps according to all the steps of any one of claims 1 to 8 when said program is run on a computer, said computer program being embodied on a computer readable medium.

2. Having regard to the objections expressed under section V, it is not clear what inventive contribution has been made to the art by the presently claimed arrangement.
3. The requirements of Rule 6.3(b) PCT are not met because the independent claims are not properly cast in the two-part form, with those features which in combination are part of the nearest prior art document D1 or D2 being placed in the preamble.
4. The claims do not include reference signs relating to the technical features referred to therein contrary to Rule 6.2(b) PCT.
5. The cited documents D1 and D2 are not acknowledged in the opening part of the description contrary to the requirements of Rule 5.1(a)(ii) PCT.